CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF THE MEETING, Public Session

Thursday, January 6, 2000

Call to order: Chairman Karen Getman called the monthly meeting of the Fair Political Practices Commission (FPPC) to order at 1:05 p.m. at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Getman, Commissioners William Deaver, Kathleen Makel Carol Scott and Gordana Swanson were present.

Chairman Getman noted that there had been a request to change the order of items that the Commission hears beginning in February. The Conflict of Interest items were requested to be heard before the Enforcement items. There was no objection by the Commission.

Item #1. Approval of the Minutes of the November 5, 1999, Commission Meeting.

The minutes of the November 5, 1999, Commission meeting were distributed to the Commission and made available to the public. Commissioner Scott moved that the minutes be approved. There being no objection, the minutes stood approved.

Item #2. Public Comment.

Scott Hallabrin, from the Assembly Ethics Committee, appeared on behalf of the Ethics Committee as well as the Speaker's Office and the Assembly Rules Committee. He noted that four legislative employees were being fined at the meeting, and that they are aware of this and are working with FPPC staff to implement procedures that will ensure that these problems do not happen in the future. Mr. Hallabrin commented that employees respond more readily to personal contact than to written requests to file, and added that the Assembly requires ethics training for their employees, and that filing requirements will be emphasized during that training.

Chairman Getman noted that FPPC Technical Assistance Division Chief Carla Wardlow and her staff go to the Legislature each year and provide assistance to anyone who has questions regarding filling out the FPPC forms. She added that the FPPC received additional funding this year for filing officer training and that she hoped that would make a difference for the filers.

Items #3. Approval of Revisions to Forms and Manuals.

Technical Assistance Division Chief Carla Wardlow presented several forms for the Commission's approval, including campaign disclosure forms for use by candidates and committees. These minor adjustments were necessary, she noted, to make those forms consistent with the amendments to forms previously approved by the Commission as part of the Campaign Reporting Simplification Program. Additionally, the addendum for 2000 was included for the Commission's approval.

Forms 425, 450, 460 A-1, 465, 470 and 495.

Ms. Wardlow reported that adding an amendment box to the top of each of these forms eliminated an additional form requirement. Additionally, each form included a signature block for the Assistant Treasurer, and references to other forms were updated. She noted that her office has been working with the Secretary of State's Office coordinating the Commission's forms with the electronic filing process.

Commissioner Scott asked whether it was necessary to have all of the individual forms, and questioned whether there might be an easier way to provide the information as electronic filing is developed.

Ms. Wardlow responded that Technical Assistance Division had been working very closely with the Secretary of State's office. She stated that she would not be surprised if more changes will have to be made to the forms once electronic filing is implemented to make the process simpler.

David Hulse, with the Secretary of State's office, stated that electronic filing, in the next ten years, will help to get to the raw data. He noted that the FPPC's forms need to be frozen for at least a year because the changes greatly impact the filing format developed for California. The changes proposed by Ms. Wardlow would make the forms more consistent, and in the next couple of years there would be more cooperation between the commission and the Secretary of State's office, perhaps leading to a new approach in the way forms are done. He clarified the procedure for doing a query search on the internet site for electronic filing.

There being no objection, Chairman Getman ordered that the forms 425, 450, 460 A-1, 465, 470 and 495 be approved.

Form 2000 Addendum.

The addendum updated regulatory and legislative changes that went into effect on January 1, 2000. Ms. Wardlow explained corrections on pages 6, 10, 11, 12, and 13, which were related to the electronic filing process, and an additional correction to a date on page 11.

There being no objection by the Commissioners, the campaign manual and the addendum were approved.

Form 700 and Form 700 Certification.

Ms. Wardlow reported that the form was updated for use in the year 99/00. Very few changes were made other than the dates. She noted that Bob Leidigh, with Olson, Hagel, Leidigh, Waters and Fishburn had expressed concern over the definition of the term "doing business in the jurisdiction." Staff recommended that the paragraph referring to doing business through the Internet be deleted from the appendix until that issue is resolved through regulatory review, which is scheduled for April, 2000.

There being no objection by the Commissioners, the Form 700 and instructions and the Form 700 Certification were approved with the deletion of the paragraph defining jurisdiction over Internet marketing in Appendix A.

Items #12, #13, #14, #15, #16, and #17.

There being no objection, Chairman Getman ordered the approval of the following items on the consent agenda.:

Item #12. **In the Matter of Michael Downs, FPPC No. 98/256.**
Item #13. **In the Matter of Shera Holmes, FPPC No. 99/294.**
Item #14. **In the Matter of George Curley, FPPC No. 98/740.**
Item #15. **In the Matter of Fresno Firefighters Legislative Action Group and Jack Coleman, Treasurer, FPPC No. 97/244.**
Item #16. **In the Matter of Richard K. Rainey, Rainey for Senate, and Paula L. Miller, Treasurer, FPPC No. 98/1.**
Item #17. In the Matter of John Davis, FPPC No. 98/028.

Items #5, #6, #7, #8, #9, #10, and #11.

Enforcement Division Chief Cy Rickards explained that most of the recommended fines were within the $200 to $300 range suggested for the streamlining process. The cases involving a higher recommended fine involved more difficulty getting the respondent to comply. Mr. Rickards agreed with Mr. Hallabrin's observation that persons seem to respond more quickly to a personal contact rather than a written contact.

Commissioner Scott expressed her concern that written contacts should be taken more seriously. Mr. Rickards agreed, noting that both the staff and the legislature are implementing steps to ensure that filing is taken more seriously.

Senior Commission Counsel Melodee Anderson explained some of the technical difficulties with contacting the respondents.

Chairman Getman noted that the expedited process allowed the commission the ability to fine people in a way that would force them to file their SEI during the time period in which it could make a difference.

Ms. Anderson added that the fines have made an impression on the respondents she has contacted. She stated that knowledge of the expedited, lower fine procedures appeared to be spreading and that, hopefully, people will file more timely in the future.
There being no objection, Chairman Getman ordered the following stipulations be approved:

Item #5. **In the Matter of Arturo Ramirez, FPPC No. 99/551.**
Item #6. **In the Matter of Alexander MacBain, FPPC No. 99/549.**
Item #7. In the Matter of Scott Vydra, FPPC No. 99/295.
Item #18. In the Matter of Gary Gartner, FPPC No. 99/463.
Item #19. In the Matter of Mike Rodriguez, FPPC No. 99/327.
Item #8. In the Matter of Andew Antwih, FPPC No. 99/544.
Item #9. In the Matter of Ching Sang, FPPC No. 99/552.

Item #4. In the Matter of William M. Shubin, Martha Shubin, Sabor Environmental Services, Inc. d/b/a Thrifty Best Pumping Service, Central California Waste Paper, Inc., and Universal Plumbing and Drain Line Service, OAH No. ZN1999-030215, FPPC No. 97/454.

Senior Commission Counsel Mark R. Soble presented this thirty six count stipulation with a recommended fine of $70,000.00. The stipulation states that the Shubins and their companies used reimbursement checks and rent credits to launder campaign contributions totaling $32,230 to candidates for the Fresno County Board of Supervisors, that they failed to tell the recipients the true source of the contributions, and that they failed to properly report the contributions.

Commissioner Makel stated that she would not vote to approve the stipulation because the respondents were being charged under two different statutes for the same violation. Ms. Makel agreed that the matter was very egregious and that she felt a very high fine was appropriate, but she did not agree that it was appropriate to charge the respondents under two different statutes for the same violation.

Commissioner Deaver suggested that the Commission ask the legislature to allow the Commission to classify some violations as "egregious" in order to have a way to double or triple fines for the more serious cases.

Commissioner Scott agreed, encouraging staff to help find a way to do this.

Mr. Soble explained to the Commission that a portion of the fine was paid up-front, and the remainder will be paid over a period of time. If a single payment is late, the commission will be able to immediately go to court to obtain a judgment in order to collect the rest of the fine. He added that the respondents own real property and that it should be easy to collect the fine.

Chairman Getman noted that the Fresno press had been covering this case extensively.

Chairman Getman moved that the stipulation be approved. Commissioner Deaver seconded the motion. Chairman Getman, Commissioners Deaver, Scott and Swanson voted aye. Commissioner Makel voted nay. The motion carried.

Item #18. Ballot Measure Committees: The *Fontana* Opinion; Status Report.

Assistant General Counsel Luisa Menchaca presented a status report memorandum, noting that meetings had been scheduled in Los Angeles on January 26th and 27th, 2000.

Commissioner Scott complimented the staff on the memorandum as well as the policy direction indicated in the memo. She suggested that staff meet with Jeff Brain, of Valley Voters Organized Toward Empowerment ("Valley VOTE") to discuss filing obligations. She requested that staff request an advance copy of the January 20th report.

Commissioner Deaver noted that there is a separate process involving school districts that does not involve the Local Agency Formation Commission ("LAFCO") that might be worth considering with this issue.

Commissioner Scott added that she has visited the Valley VOTE website and that they were using the school district as their parallel issue, and that we need to decide if it should be treated in the same way.

Chairman Getman pointed out that school district reorganizations happen often, and that it is important that the commission look at all the implications before requiring disclosure.

Item #19. Litigation Report.

Assistant General Counsel Luisa Menchaca reported that there would be a status conference on Proposition 208 on January 20th, 2000, and that the trial would be set for sometime this summer.

Chairman Getman noted that Judge Karlton has stated that the trial would not include issues that had already been tried, just new issues.

Ms. Menchaca noted that in the *Griset vs. FPPC* case, no hearing has been set yet, but that the Attorney General is assisting in preparing the oral argument for this case.

Chairman Getman added that the *Snyder* case has been heard by the California Supreme Court, and that the decision should be issued one hundred days from the hearing date.

Item 20. Executive Director's Report.

Executive Director Robert Tribe reported that the feasibility study for the electronic filing of the form 700 has been tentatively approved, but that we could not be certain of its funding until the end of the fiscal year. It is expected that the study itself will take about three months to complete.

Technical Assistance Chief Carla Wardlow added that this would just cover the FPPC's part of electronic filing, the form 700 for about fifteen thousand filers in the state. It would allow someone the ability to go to our website; fill out and file the form. She noted that there may be objections from public officials at having their personal financial interests available on line, but that even if that is not possible, at least they will be able to get the form to the FPPC electronically, and that should ease the burden for everyone.

Chairman Getman noted that there is a national debate about having personal financial interests available on line.

Commissioner Scott expressed her concern that information would become less available through this process, and encouraged the commission to take positive steps towards answering the privacy issue.

Chairman Getman assured everyone that information available to the public would not diminish, but the amount of additional information that will be available on the Internet has yet to be determined and will require a policy discussion by the commission because of privacy concerns. She added that once the approvals have been given to do the feasibility study, the issue could be addressed.

Item #21. Legislative Report.

Government Relations Director Scott Tocher reported that staff had met with Bill Lloyd, Director of Senate Relations and Labor Relations for the Governor's office with regard to AB 974, which raises certain thresholds in the Political Reform Act. There were objections to the percentage of Lobbyist firms required to be audited by the Franchise Tax Board, so the bill was pulled back from the Governor's desk. Mr. Tocher and Ms. Menchaca met with Mr. Lloyd and staff of the bill's author, Assemblyman Papan, agreeing that the auditing requirements would be amended out of the bill. At the same meeting, staff were informed that the Governor's Office perspective on legislation in general, is that there should be less of it and that it should be more substantive and innovative, not "tinkering around the edges." When AB 974 is sent back to the governor's desk, it should be accompanied by a letter from the commission explaining why raising the threshold provisions is critical to the Commission and to the Political Reform Act's well being. A draft of that letter has been developed.

Chairman Getman noted that she had been talking to people who are dissatisfied with the provisions of the Political Reform Act, and that it is daunting for people to comply with an Act that changes as much as this one does. She cautioned that the commission should not "tinker around the edges" with technical changes that create too much work and effort implementing the changes as well as trying to make the public understand the changes.

Mr. Tocher presented the request to redefine "foreign principal" from Robert Leidigh, on behalf of his clients. Mr. Tocher met with Assemblymember Papan's aide Ed Randolph, and representatives from the Secretary of State's office. He reported that Mr. Papan is agreeable to carrying the legislation to remedy the situation and that the Secretary of State's office has forwarded language to Mr. Papan and that should arrive at the FPPC in the next few days.

Ms. Getman explained that the language would be very narrow, making it very clear that United State's citizens who are domiciled abroad will not lose their rights to contribute to ballot measure campaigns in California. The Secretary of State's office has asked the FPPC to cosponsor that legislation with them and Assemblyman Papan's office has indicated that cosponsoring with the Secretary of State's office would be seen more favorably by the legislature.

Robert Leidigh, with the law firm of Olsen, Hagel, Leidigh, Waters and Fishburn, spoke on behalf of his clients Frederick and Kevin Lin, Martin Inderbitzen, Ted Fairfield and James Tong. He explained that whether or not a person can vote is determined by state law. In California, he stated, voting requires domicile in the state. He added that, by law, Americans residing abroad are allowed to contribute to election campaigns, but not to ballot measures.

Mr. Tocher noted that the legislation would not be urgency legislation, because that would make passage more difficult to obtain.
Mr. Leidigh added that there will be two elections between now and when the legislation could be passed if it is not handled as urgency legislation, and that Americans living abroad would continue to be disenfranchised during that time.

Chairman Getman noted that if it is handled as urgency legislation, it may not pass, and that while she understood the problem, there was not anything the commission could do about it.

Chairman Getman moved that the Commission sponsor legislation proposed by Mr. Papan to have a narrow fix on the "foreign principal" problem. The motion was seconded by Commissioner Makel. The motion passed by the consent of Chairman Getman, Commissioners Deaver, Makel and Swanson. Commissioner Scott abstained.

Mr. Tocher then presented a proposed technical fix to Chapter 4 - Campaign Disclosure of the Political Reform Act. He explained that SB 50, effective January 1, 2000, added an additional subgroup for filers of preelection statements, and that the scheme of where those preelection statements are file needs to be revised to reflect that the new statute is present and that there is an additional filer. This proposed technical fix to section 84215 prescribes where those statements are to be filed and the procedure for determining where a given group files their statements.

Chairman Getman suggested that, once approved, Mr. Tocher submit the proposal to the elections committees for their committee sponsored bills. There being no objection, Chairman Getman ordered that Mr. Tocher submit the proposed amendment to the elections committees for their consideration for committee sponsored bills.

Mr. Tocher added that he hoped to receive a copy of the legislative council draft of the Commission's sponsored legislation for this year on January 7. He reported that Senator Perata of the East Bay will be authoring the Forms Simplification Project. Mr. Tocher sent the mock-up materials and the language that the Commission approved in August and September to Mr. Perata's office, and the legislative council is putting it in formal bill form which should be received at the FPPC on January 7 for staff review.

The Commission adjourned for closed session at 2:34 p.m.

CLOSED SESSION

The commission returned from closed session and reopened the meeting to the public at 3:50 p.m.

The meeting adjourned for the day at 3:50 p.m.

Friday, January 7, 2000

Call to order: Chairman Karen Getman reopened the monthly meeting of the Fair Political Practices Commission (FPPC) to order at 9:10 a.m. at 428 J Street, Eighth Floor, Sacramento, California.. In addition to Chairman Getman, Commissioners William Deaver, Kathleen Makel Carol Scott and Gordana Swanson were present.

Item #22. Consideration of Policy Memorandum Regarding Phase II - Conflict-of-Interest Regulations.

Chairman Getman introduced the purpose of this portion of the meeting, explaining that the Commission is beginning Phase 2 of the Conflict of Interest program and will, in the process, revisit those regulations which have been most troublesome over the years in order to clarify the

law. She described the efforts made by staff to notify the public and encouraged public input during the Phase 2 project.

Commissioner Scott also encouraged public input.

Assistant General Counsel Luisa Menchaca gave a brief introduction to the overview of what the Phase 2 project would be doing over the coming year. She noted that the scope of comments from the public vary somewhat from what the projects will be, and that they intend to be open and flexible to those comments. She added that there will be work plan discussion meetings for possible revisions in March, June and September, and that they would summarize those to the Commission so that they may determine whether the priorities need to be shifted.

Ms. Menchaca reported that Legal Division is working very closely with Enforcement Division in the Phase 2 project. She added that at the end of the project, they will focus more on looking at the entire language to address concerns about simplifying language.

FPPC Counsel John Vergelli provided an overview of how the Phase 1 eight step standard analysis was adopted in Phase 1. He noted that the statute itself gave the direction for the eight step process.

Chairman Getman stated that there are some cases in which the staff's advice letters told the person requesting advice that the staff did not know whether a conflict existed because the staff did not have all the facts, and that it is a problem when staff cannot advise a person on whether they can or cannot vote.

Chairman Getman also raised the issue of how the rules apply in urban and rural areas, where the 2,500 foot rule might have a very different effect.

Mr. Vergelli pointed out that there can be a down side to a fact driven "bright line" regulation, in that it can produce absurd results too, because they cannot take into account circumstances of particular situations. He added that he had not found a good model in other jurisdictions for handling these types of problems, because our statute is somewhat unique compared to the federal law and the statutes of some other states.

Mr. Vergelli explained that the idea had been raised of formulating a "standard of care" to guide public officials in applying the reasonably forseeable material financial effect standard. He mentioned that the corporate law model of the "business judgement rule" has been suggested. He said that there are some important unanswered questions that need to be worked out to make it work for public officials.
Commissioner Scott noted that those business decisions are very complex, even though they are not legislative.

Mr. Vergelli agreed that pursuing those models is a good idea and deserves inquiry.

Commissioner Makel requested that the staff provide specific examples of how these rules apply.

Commissioner Swanson pointed out that the public official has usually only one to two weeks to

determine whether they can vote on an issue, which may not be enough time to get an answer from the FPPC. She asked what recourse the person has if they acted in "good faith" when they voted.

Mr. Vergelli explained that when the issue is brought to the FPPC's attention after the vote has been made, the case could then go to an administrative law judge or to a judge and a jury. If the public official does not wish to fight the accusation, they may enter into a settlement with Enforcement Division. He added that there is no "good faith" exception in the statute in terms of finding liability. If a standard of care is followed, there could be different results ranging from giving the person complete immunity, to making it an affirmative defense, to making it a factor in mitigation.

Ms. Menchaca stated that the "good faith effort" issue has been raised before, and that it may be something that needs to be explored.

Commissioner Deaver noted that some public officials who are not sure whether it is legal to vote simply do not vote.

Mr. Vergelli explained that the PRA conflicts are only financial conflicts and that there is no "smell test" to determine conflicts. He noted that the law tends to be more complex, but it does provide some protection to people who are unfairly being branded with a "smell test".

Lee Dolley, an attorney from Los Angeles County encouraged the commission to continue their efforts on Phase 2. He agreed that the law was very complex, but encouraged the commission not to over simplify, but to clarify the regulations. He believed that whether a public official is directly or indirectly involved is a function of looking at materiality, and has found the directly or indirectly standards to be helpful. He urged that the commission look into the "good faith" issue, and try to find a standard that will work. Mr. Dali complimented the staff in terms of their responsiveness and help over the years.

Mr. Dolley urged the commission to notify individuals who have had a conflict complaint charged against them as soon as that complaint is received, so that they have the opportunity to present their facts before the issue is publicized in the media.

Robert Leidigh, as a former FPPC staff member, explained the changes made during the 1980's to the regulations. At that time they found that it was very difficult to apply the pre-existing regulations in the real world due to the time constraints, and so developed the materiality standards currently being used.
Mr. Leidigh noted that, in some ways, the regulations they established were akin to a "smell test". In retrospect, Mr. Leidigh believed that the "one penny rule" was a mistake because there are circumstances where it leads to absurd results, and he encouraged adoption of some monetary standard for directly involved economic interests. Absurd results, he cautioned, lead to disrespect for the law.

Mr. Leidigh described the challenges presented in the 1980's to come up with a formula to determine whether there was a conflict in situations where a person owned a small amount of stock in a large company. He explained that the "public generally" -like thinking went into the

regulation because many people in the community may also have had a similar holding in the company.

He explained the history of the distance provisions in the real property regulations, with particular regard to urban and rural properties. Mr. Leidigh noted that the more rural the area, the more likelihood there was that the "public generally" rule applied. He gave examples of unique situations, but added that dealing with those unique situations added complexity to the regulations, making it more difficult for people to understand.

Mr. Leidigh explained that there was never an intention to require appraisals, and described the difficulty of getting accurate appraisals. He also noted that the appraisal cost is cumbersome for the public official, and that the process is time consuming for the official as well as FPPC staff. He encouraged the commission to eliminate the need for appraisals.

The "one penny rule" would be Mr. Leidigh's first priority for changes in the regulation. He stated that some of the criticisms of the direct/indirect rule have some validity, but he was not convinced that they should be changed.

Mr. Leidigh explained that staff in the 1980's created a flow chart to accomplish the same ends as the eight step process, and did try to set some "bright line" tests to make it easier to determine conflicts. Mr. Leidigh suggested that objective "bright lines" were good to have and should be continued. He added that the "financial effect" is fairly easy to understand, but that the "reasonably forseeable" standard caused difficulty, especially when the effect occurs over a long period of time.

Mr. Leidigh added that the "public generally" regulations, as adopted, have created some of the difficulties with compliance, because it is so hard to get a handle on what the "public generally" is. He noted that the original commission opinions utilized a sliding scale, not a number. He said that the public generally regulation should be an important factor of the Phase 2 process.

Mr. Leidigh urged the commission to adjust the dollar numbers in the materiality standards upward. He noted that the basic numbers have not changed in twenty five years.

He added that he did not have a particular perspective on the industry specific provisions, but urged the commission to be mindful that in FPPC vs. Superior Court, the state supreme court struck down industry specific disclosure thresholds for lawyers and realtors. He stated that industry specific substantive rules are difficult to justify under equal protection grounds, and that one industry should not be treated more harshly than others.

Mr. Leidigh noted that if the distance rules were broken down into rural and urban, it might help narrow the conflict issue. Additionally, while the three hundred foot rule still had viability, there should not be a one penny rule and the twenty-five hundred foot rule could be lowered, perhaps even changing the rule to two rings instead of three. He noted that if it was a two ring rule, the public generally rule could help make the final determination.

Chairman Getman clarified that the commission will not be formally adopting the Phase 2

amendments until all of the projects have been heard. This will allow the commission to make sure that each one will fit with the other rules.

Chairman Getman adjourned the meeting for a break at 11:05 a.m.. The Commission meeting reconvened at 11:20 a.m.

Stan Weig, from the California Association of Realtors, noted that the changes he finds the most important in this process are (1) an easier method to determine conflicts, and (2) reexamining the "public generally" exception. Because realtors are so often involved in land use industry related decisions, they are stopped by the conflict regulations more often than persons in other occupations. He suggested that the Commission look at the Directors and Officers standard in the Corporations Code 309 as a possible foundation for the standard of care, pointing out that there is a lot of court precedent associated with that law. He also pointed out that some of the most difficult issues, such as growth control and transportation, are business climate issues, and that the "public generally" exception can be most effective in encouraging participation. Mr. Weig noted that if the Corporations Code is utilized, it would not be an adoption of a business judgement rule so much as it would be an adoption of a general standard of care.

Mr. Weig stated that the realtors do not have a position on the distance rules in the real property materiality standards. He added that an appraiser cannot determine what value a property will have in the future, and suggested that the commission not look at that detail. He agreed with Mr. Leidigh that the "public generally" rule could resolve many of those conflict questions.

Chairman Getman noted that public hearings will be held during the next year in the communities that are most affected by the issues. She urged the public to advise the commission of any areas that might be interested in holding the public hearing.

Michael Martello, City Attorney of Mountain View, and chair of the League of Cities FPPC Committee, noted that the Phase 1 eight step plan and related reorganization of the regulations was very helpful to them. He compared the 1974 Political Reform Act (PRA) and California Environmental Quality Act (CEQA). He noted that it has been more difficult to write regulations for the PRA than for the CEQA because the CEQA only affects consultants and lawyers. The PRA affects people in all walks of life and therefore the regulations must be written in a way that everyone can understand, not just consultants and lawyers. Mr. Martello stated that figuring out a better way for non-lawyers to make these decisions may need to be another project.
John Bukey, General Counsel to the California School Boards Association, echoed Commissioner Swanson's concerns over the difficulty of looking at an agenda and not knowing whether a conflict exists. He pointed out that school districts do not have attorneys available, and urged the commission to consider mitigating de minimis types of violations as well as good faith efforts to comply. He reminded the commission that people elected to public office are expected to vote, and that he believed that it would be a sad thing if a public official did not vote because of fear that he might have a conflict, when in fact he does not have a conflict. He added that he was glad to know that the commission will be going to communities to get more public input on the conflicts project and pledged his support and help.

Craig Holman, with Californians For Political Reform Foundation, commented that the

regulatory framework is the result of twenty five years of experience and development and is one of the best in the nation. He cautioned the commission to exercise prudence in reevaluating the regulatory framework. He suggested that a greater problem with the conflict of interest laws is the lack of educational outreach, and urged the commission to pursue more educational outreach.

Chairman Getman noted that the commission is requesting that the legislature fund a public education unit within the FPPC.

Mark Morodomi, Senior Commission Counsel, pointed out that the Enforcement Division looks for provability in a case, noting that he had never prosecuted a real estate conflict of interest case involving the three hundred to twenty-five hundred foot and the beyond twenty-five hundred foot distance regulation, because they cannot prove the effect. There are no appraisers on the staff of the FPPC, and there are no resources to hire appraisers. Even if there was an appraisal, opposing counsel would have their own appraisers with a different appraisal. Enforcement staff make these cases a lower priority because it is so difficult to prove the case.

Commissioner Scott encouraged the public for input in letting the commission know if the regulations can be understood.

Chairman Getman adjourned the meeting for a break at 11:45 a.m. The Commission meeting reconvened at 1:10 p.m.

Item #23. Pre-notice Discussion: Repeal Regulation 18705.1 - Materiality Standard: Economic Interests in Business Entities. Reenact Regulation 18705.1. Materiality standards for business entities.

Conflict of Interest Phase 2 Project A.

Staff Counsel John Vergelli introduced project A of the Phase 2 conflict of interest project, relating to step five of the eight step standard analysis. He explained the two ways a person can have an economic interest in a business entity under sections 87103(a) and (d). He noted that the distinction is important. When the business entity in which the public official has an economic interest is a very large business entity, and the public official only has an investment interest, the current rule states that materiality will be judged based on the indirect involvement standards even if the business entity is directly involved. For most other cases, it does not matter whether the interest in the business entity is in accordance with section 87103 (a) or (d).

Mr. Vergelli stated that the materiality scheme for indirectly involved business entities is to divide business entities into different categories, based on financial size, then set different thresholds within those categories to judge the materiality of the financial effect. The notion is that since business entities vary in size so greatly, materiality standards must be tailored to the size of the business. Mr. Vergelli noted that the commission will need to decide if it wants to retain the current concept of categorizing by the size of the business entity, and then assigning differentiated materiality standards to the different categories. Legal Division recommended keeping the current system.

He pointed out that if the commission keeps the direct involvement vs. indirect involvement dichotomy, that decision does not prevent the commission from changing the respective materiality standard.

Mr. Vergelli added that the Fortune 1000 document is proprietary, and that the general public may have difficulty getting that information, which is why staff is recommending that the regulations go back to using the Fortune 500 document because it is available in the public domain. He also indicated that staff is recommending that the dollar amounts in the materiality standards be updated, since those amounts are now fifteen years old may not reflect today's economic reality.

Chairman Getman asked for public input, and explained that public comment will be invited during the beginning of the discussion, particularly when it involved broader policy issues, and as the discussion proceeds, the public is invited to step up to the microphone and make their public comments as they have something to say.

Bob Leidigh, in his capacity as a former FPPC staff attorney, explained that the Fortune 500 document was an avenue originally utilized because it was one of the only tools available at that time which allowed someone to find out how big a company was, and that technology may have made that information more available today. The Fortune 500, however, only represented the manufacturing companies. There was also a Fortune Service 500, which included companies that provided services, such as banks and insurance companies. The regulation required that the FPPC Bulletin publish both of those lists annually.

Mr. Leidigh stated that if a public official owned a 10% or greater interest in a business entity, that may be a way to break down the direct involvement vs. indirect involvement issue even further, and that the direct involvement rule for persons who are sole proprietors in a business works very well and should not be abandoned. He suggested that the interest under 87103 (d) is different than if someone owns a small amount of the business 87103 (a). The problem, he stated, is that if these differences are taken into account, it makes the regulation more complex.

Commissioner Deaver noted that the Securities and Exchange Commission may have a web site that lists some of the companies. He added that there is artificial intelligence software which would put together facts and rules and they could be used to determine if conflicts exist.
Mr. Vergelli noted that staff had looked at the Securities and Exchange Commission's web site, called the Edgar database. The information available may not be helpful for this purpose because of the way it is organized.

Lee Dolley encouraged the commission to look at the issue of direct vs. indirect involvement, and said he favors the distinction between the two. He pointed out that it is relatively easy to find a company on the Fortune 500, but it is not easy to find out if their assets have been increased or decreased by $250,000.00. The public official may then disqualify himself because he does not know if he has a conflict and will not take the risk of voting.

Mr. Vergelli pointed out that the rule that preceeded the current rule looked at a percentage impact on the gross revenues of the firm. Often the firms would not give the revenue information out, and that was why the current system was developed. The challenge, he stated,

was to either find a way that does not measure financial effect in dollars or find ways to measure dollar impact, which would again mean looking at revenues, assets and liabilities of companies.

Michael Martello commented that the current regulation is easy to work and understandable, and that if the commission chooses to go back to the old system they should ask whether it makes a difference.

Mr. Martello explained an example of city council members who sold Home Depot stock because the council was considering rezoning Home Depot property. He suggested that even if the council had turned down a Home Depot store, it would have had very little effect on Home Depot's bottom line because they are have 400 stores. However, the council members may have had to decline to participate because of the appearance of impropriety even if they owned less than $10,000.00 of stock. He stated that it would be harsh under the current regulations, for a council member to not be able to vote on whether AT&T can remove a tree if the person owns $11,000.00 worth of AT & T stock, and he urged that the commission fix that rule. He also pointed out that AT & T competitors may request something from the city, and those council members who have AT & T stock may again not be able to vote because the potential revenue for AT & T exceeds the materiality standards, even though it should not affect AT & T stock prices because AT & T is so large that the new revenues are a very small portion of their annual revenues.

Commissioner Scott pointed out that no matter what the commission does with the rules, there will always be issues about appearances of improprieties.

Mr. Martello agreed, and pointed out that the educational outreach process may help alleviate those perceptions. He added that by using the flow charts and the eight step process, it always results in disqualification for direct involvement, and disqualification for indirect involvement most of the time.

Commissioner Makel stated that she was satisfied with the direct vs. indirect involvement distinction, and that any problems which might flow from that could be resolved by looking at the one penny rule.

Commissioner Scott had no problem with the direct vs. indirect involvement distinction, but was concerned about the materiality issues and application of the materiality standards.

Commissioner Deaver suggested that the one penny issue should be addressed.

Mr. Vergelli clarified that most people can grasp the concept of the direct involvement rule and associated materiality standards without difficulty, but noted that the materiality standards for indirectly involved economic interests are harder to understand.

Chairman Getman stated that, at least for the initial discussion purposes, the direct vs. indirect involvement distinctions will be kept.

Mr. Vergelli began the discussion about materiality standards applicable to a directly involved business entity. He stated that the commission must address (1) the circumstances in which are

very large business entities are considered directly involved in a decision, and (2) whether or not the commission wishes to change the materiality standard for directly involved business entities that do not fit into the very large company exception.

He explained that the commission must decide what is material for very large companies, even if they are directly involved in the decision.

Chairman Getman pointed out that the statute states that anyone with a $1,000.00 investment or more has an economic interest. She did not like the idea of "looping back" and mixing the materiality and investment interests together, because they are two completely different things. Mr. Vergelli responded that this is the only materiality standard that considers the size of the public official's stake as relevant. He agreed that it is inconsistent and makes the analysis more complex. He noted that one way to mitigate the impact would be to adjust the "one penny rule."

Mr. Vergelli noted that directors or officers have a qualitatively different kind of interest than an investor. Chairman Getman noted that the statute states that there is no difference between the two. Mr. Vergelli explained that he did not believe the monetary thresholds in §87103 violated the statute.

Mr. Vergelli explained that the distinction between §87103 (a) and (d) is relevant in step 5 only if a very large business entity is involved, and that the exception only affects people who have investment interests, and not directors and officers. He noted that he thought that the people who developed this exception saw it as a safeguard for those persons who may be passive investors. He added that if someone falls into the exception, they can still be determined to have a conflict under the indirectly involved materiality standards.

Chairman Getman questioned whether the commission could keep one standard, and still take into account the fact that an official's company could be directly involved and yet the impact is not material. Mr. Vergelli responded affirmatively if the "one penny rule" was adjusted.

Ms. Menchaca added that the standard applied for all of the subdivisions, except for the direct vs. indirect investment interests, is directly involved, under Regulation 18704. She noted that this is not necessarily the one penny rule. Ms. Menchaca stated that just a certain action is sufficient, and if the commission deems it, that action can be material. She added that the commission could make it more consistent with the way other subdivisions are treated, by eliminating the $1,000.00 to $10,000.00 test for 87103(a) interests, and to add to 18704.1 some kind of de minimis test that applied to all of the enumerated interests.

Chairman Getman observed that this would eliminate some things that are conflicts now and would bring in new conflicts.

Mr. Vergelli agreed, noting that the end result of the rule is that a higher materiality standard would be set for an official with a less than $10,000.00 investment in a very large company. It would still allow the one penny rule for the directly involved small business in a local political setting.

The nature of the decision is always important because it sets up the factual circumstance, Mr.

Vergelli said, but not always relevant. If the one penny rule is adjusted, however, that would change.

Commissioner Swanson observed that dealing with the one penny rule would make sense because enforcement resources are limited. Mr. Vergelli responded that enforcement may like the one penny rule as it is because it is so clear. If it is raised, it could make enforcement more difficult because they would have to prove that there is enough financial effect to get over the threshold.

Chairman Getman expressed her concern that in some cases, the FPPC could be taken to court for not determining whether there is a material financial effect on a large company. Mr. Vergelli responded that the challenge would probably not be that materiality was not looked at, but that the materiality standard was not consistent with the statute §87103, noting that the materiality standard was "any" financial effect. He added that the materiality standard was very low and could be challenged on the basis of not being consistent with the enabling statute because "any" financial effect to a very large company may not be material.

Commissioner Makel pointed out that common sense would show that in some cases there is not a material financial effect. Mr. Vergelli agreed, noting that it illustrates why the exception policy discussion is before the commission.

Commissioner Scott stated that she believed that no one should be voting on something that affects them, their business, or their family directly. She saw more harm in having them vote in those cases than in not having them vote, because the issues involve cases that affect people's daily lives, and they are all going to affect someone. Mr. Vergelli noted that the one penny rule was based on that concept. He added that most of the decisions involving a business entity that is directly involved results in a more than de minimus impact.

Commissioner Deaver noted that most of the cases involved planning and zoning and questioned whether this issue is important. Ms. Menchaca responded that if the exception were deleted, there would be questions later. She noted that under the other subdivisions conflict determinations are pretty clear. In the case of an employee holding stock in a business entity, the employee may or may not know that the business entity is directly involved in a decision, and that in those cases an exception might be appropriate.

Chairman Getman objected to giving the exception to someone with stock in AT & T, but not to a secretary for AT & T, and saw no justification in the statute for treating the two differently. Mr. Vergelli responded that the distinction may have been made because, in the one case, a person might lose a portion of their portfolio, whereas in the other case, a person could lose their livelihood.

Chairman Getman asked staff to develop 2 alternatives; one keeping the exception, and one exploring the one penny rule and looking at an exception for de minimus decisions affecting a business entity regardless of whether the official is an employee or an investor.

Commissioner Scott requested that Enforcement Division provide input.

Commissioner Deaver agreed that the one penny rule may seem silly at times, but expressed concern that the alternative would make enforcement difficult.

Mr. Vergelli noted that public confidence in the rules could be undermined if the threshold is determined to be too high, in contrast with the current "one penny" threshold.

Commissioner Scott noted that she liked the "bright line" test, noting that with the materiality standard the one penny issue could still be addressed.

Mr. Vergelli added that the current exception is well founded and useful, because in the case of enormous companies the "one penny rule" erodes confidence because it the financial effect is not as material.

Chairman Getman suggested that the issue be addressed as a materiality issue instead of an investment issue so that it will be more consistent with the statute. Mr. Vergelli responded that if references to the current cap were removed from the regulations, that would make the benefit of the exception available no matter what the size of investment by the public official. Ms. Menchaca noted that this was not a recommendation of the Legal Division.

Chairman Getman clarified that she would like to see Section (a) and (d) interests looked at together, and look at business entities to see if there is a materiality standard that would address the one penny rule, and the de minimus decisions that would apply to both (a) and (d). She requested that a materiality standard for business entities be developed that would be applicable even in a direct decision area that at least acknowledges that there might be some de minimus decisions that simply do not meet the statutory language, because they do not have a material financial effect on a business entity.

Commissioner Scott noted that the commission has an overriding obligation to protect the public and should be wary of reading the statute too strictly.

Commissioner Deaver added that the commission has an obligation to use common sense.

Mr. Vergelli clarified that Legal Division would be bringing back in March a proposal to retain the exception, but recast it in a way that does not have the distinction between business entities where the public official has an investment and business entities where the public official simply holds a position. Additionally, the proposal will retain the provisions for a very large corporation.

Commissioner Deaver encouraged public input.

Chairman Getman particularly asked the public for any input regarding possible dangers resulting from the proposed changes.

Commissioner Scott reiterated her concern that legislators do not cover every situation and the commission is expected to use good judgment.

Mr. Vergelli noted that the commission will need to decide how to define "very large"

corporations perhaps by utilizing the Fortune 500, the New York Stock Exchange, or by meeting the criteria for listing on the New York Stock Exchange, and asked for direction from the commission.

Chairman Getman and Commissioner Makel noted that the Fortune 500 and New York Stock Exchange definitions were very easy to apply.

Mr. Vergelli presented the materiality standards for business entities which are indirectly involved in the governmental decision issue, noting that currently there are seven categories. He is proposing a four part categorization. Regulation 18705.1(b) relies on the Eligible Securities List which was maintained by the California Department of Corporations but which is no longer in existence, and onlisting on the Pacific Stock Exchange, which duplicates much of the information on the NASDAQ. He recommended dropping both of those lists from the regulations, noting that this would be a good way to simplify sorting the business entities into categories based on their financial size.

Commissioner Scott expressed her concern that this would be a dilution of some of the decision making. Mr. Vergelli disagreed, noting that they are trying to determine how big a company is in order to decide how much of a financial effect is important enough to trigger a conflict.

Mr. Vergelli explained that if the commission adopts the recommendations, the Fortune 500 (which includes the very big private companies), the New York Stock Exchange (which includes large companies), the NASDAQ (which has smaller companies), and the fourth category (which includes, basically, all other companies), would be adopted as the categories for applying the standards.

There was no objection from the commissioners.

Mr. Vergelli suggested that the commission update the actual dollar thresholds in accordance with his November 23, 1999 memo, for each of the categories. He explained that one option is to adjust for inflation. He noted that there has been a dramatic change in the stock market since the original thresholds were established, and for that reason, inflation may not be the best method of addressing the issue, but it did give the commissioners one set of options.

Commissioner Swanson suggested that a higher threshold might be considered because the commission may not adjust these amounts for a number of years and because round numbers are easier to work with. She also suggested that something should be factored in to continue adjustments for the next five years.

Mr. Vergelli reminded the commission that they should keep in mind the magnitude of the companies involved in this issue, explaining that a ten million dollar effect may not be enough to create a bias when the company's gross revenues are billions of dollars. He suggested that the commission might want to calculate a materiality standard as a percentage of the company's annual gross revenue.

Ms. Menchaca noted that if the commission chose to utilize the CPI alternative, staff should

prepare a draft which will include some language to include an automatic review in five years.

Mr. Vergelli reported that he had not heard any opposition to raising the thresholds, and he believed that most people would support at least a modest increase. Ms. Menchaca suggested that utilizing the CPI seemed like a good alternative. Mr. Vergelli noted that utilizing the CPI would be good for smaller companies, but that for the very large companies a more dramatic increase might be more appropriate. His personal recommendation was that a tenfold increase for the very large companies might be needed, or possibly even larger.

Commissioner Makel recommended that a comparative analysis be conducted. Mr. Vergelli responded that the financial data is fairly readily available for the very big companies, but the information is not as readily available for the smaller businesses.

Commissioner Scott noted that she would like a CPI and money comparative analysis.

Mr. Vergelli stated that determining the percentage amount cannot be reduced to a formula, and the commissioners would have to decide what would be material.

Enforcement Division Chief Cy Richards noted that there has been some consideration for utilizing a different approach for small business.

Chairman Getman and Commissioner Makel agreed that a differential adjustment made a lot of sense, and Chairman Getman suggested that staff look further into it.

Mr. Vergelli pointed out the difficulty of finding information on small businesses. Commissioner Deaver noted that the National Federation of Independent Business may have some data.

Michael Martello concurred with the suggestion to change from the Fortune 1000 to the Fortune 500, and asked that the numbers be rounded off. He offered to share web site that could find any traded stock to determine revenues.

Commissioner Scott compared the gift limit concerns with the materiality concerns and noted that people are concerned about the huge amounts of money. She warned that if the amounts are set very high and the commission argues that it will not make a difference, the public may end up wondering what the commission is doing.

Commissioner Swanson requested that staff provide the commission with a couple of options, explaining what the options would mean, how they would impact enforcement, and how they would bear out in the political world as well.

Chairman Getman noted that throughout the Phase 2 discussions, Legal Division, Enforcement Division, and Technical Assistance Division are working closely together to make sure that the new regulations will work for everyone.

Ms. Menchaca mentioned that the way the regulation is structured now would allow a person to look at a particular subsection, apply it, and then get out. The way it has been structured would

not have given the answer as easily, and she sees that as a great improvement.

Chairman Getman adjourned the meeting for a break at 2:55 p.m. The Commission meeting reconvened at 3:05 p.m.

Item #24. Prenotice discussion of Proposed Amendments to Conflict of Interest Regulations. Amend Regulation 18703.5 - Economic Interest, Defined: Personal Financial Effect. Amend Regulation 18705.5 - Materiality Standard: Personal Financial Effect. Amend Regulation 18705(c)(1) - Standards for Determining Whether a Financial Effect on an Economic Interest is Material; Special Rules. Adopt new Regulation 18232 - Definition of "Income." Amend Regulation 18705.3(b)(2) - Materiality Standard: Economic Interests in Persons Who Are Sources of Income: Non-Profit Entities.

Conflict of Interest Phase 2 Project E.

Senior Commission Counsel Larry Woodlock presented an overview of the personal financial effect rule problem, noting that it is not a problem of substance so much as it is a problem of form. He stated that statute 18703.5 was confusing in that it included references to "personal financial effects" and other "economic interests" and left the impression that there was a distinction between the two. He explained that in 1985 the legislature made clear its intent to include "personal financial effects" on the official and did so in a way that left people wondering if there was a difference between the "personal financial effects and other economic interests. He noted that staff and more experienced members of the regulated community quickly figured out that it did not make a difference, and treated "personal financial effect" as though it were a sixth "economic interest". Less experienced persons, however, did not always recognize that they were the same, and wondered whether the statute required that one should be analyzed first, or that "personal financial effect" is a more or less important economic interest. Mr. Woodlock recommended that the regulation be rewritten to make it clear that the "personal financial effect" is treated in the same way as an "economic interest."

He reported that he had not heard any objections to the proposal from the public. There were no objections from the commissioners.

Mr. Woodlock clarified that the commission would need to accept the staff's understanding that the "personal financial effect" is the functional equivalent of a sixth economic interest in order to make decision (2) of his proposal, which would determine whether the language harmonizing the materiality standard for the personal financial effect rule with the materiality standards for business entity investment interests and for real property interests should remain in Regulation 18703.5, or be moved to Regulation 18705.5, as staff recommended.

Mr. Woodlock next noted that, in 1985, the $250.00 standard that the commission thought appropriate for a "wallet" effect would displace the six figure standard for an effect on an investment on a business entity whenever there is a paper change in asset value. The application of the "personal financial effect" rule would disqualify an official even though the official would not be disqualified under the standard for an effect on a business entity or investment. The Commission, therefore, had to prioritize the materiality standards and concluded that the interest in personal finances cannot be considered because of the conflicts between the two standards.

Otherwise, they would be writing out of the rules the different materiality standards for economic interests that have been outlined in the statute from the beginning.

Chairman Getman explained that staff has convinced her that this is not an exception but a reconciliation of the materiality standards, and that if it is moved to the materiality standards then the materiality standard for personal financial effects will not wipe out the materiality standards elsewhere. She noted that the commission does have the authority to interpret what is a material financial effect and that she is comfortable keeping it but moving the distinction into the materiality standards (Option 2).

There was no objection to keeping the distinction and moving it to 18705.5.

Mr. Woodlock discussed the proposal to increase the threshold of $250.00 for the personal financial effect materiality standard, set in 1985. The Commission, he explained, needed to determine at what level of personal financial effect a public official may entertain or thought to be entertaining a bias. He noted that there was no gift limit in 1985, and that there was no formula for establishing the $250.00 limit in 1985. Mr. Woodlock added that staff did not have a recommendation for what that threshold should be, nor did the regulated community at the Interested Persons meeting and no one has yet objected to raising the threshold. The CPI adjustment from 1985 would bring the threshold up to about $350.00 to $375.00, according to Mr. Woodlock.

Commissioner Deaver suggested a $500.00 threshold, which would take the amount ahead a few years.

Mr. Woodlock did not think that the commission should plan for inflation. He added that the amount should not be sensitive to CPI's, but rather on a human judgment. Mr. Woodlock thought that the commission could come up with a figure that would be good today, and that whatever figure the commission decides on should be good for a few years. The commission, he added, should not wait another fifteen years to revisit that threshold.

Commissioner Deaver noted that $500.00 in a twelve month period is not likely to create a bias.

Chairman Getman stated that the gift threshold is $300.00.

Mr. Woodlock clarified that the $500.00 threshold is per decision, and that it estimates the impact on the official's pocketbook of a single decision, is not open-ended and is prospective, for any twelve month period where an estimate can be formed (usually in the future). He added that while it might be good to have the same thresholds for the different sources of money or interests, it may not work. The impact of a decision, he noted, is less certain than the value of a gift.

Michael Martello noted that the $250.00 threshold does not typically result in disqualification.

Lee Dolley noted that it does not come up very often and it is a very limited area.

Mr. Woodlock reported that the regulated community thought it was appropriate to look at

raising the threshold because it was a fifteen year old standard. The fact that it very seldom has the effect of disqualifying people may be an argument against raising the threshold or raising it only a small amount.

Commissioner Makel stated that she saw no need to raise the threshold unless there is a need for the raised threshold in an offensive use of the conflicts rules. Commissioner Deaver noted that the threshold would have to be raised pretty high to cover the offensive use issue, and Mr. Woodlock agreed, noting that it could lead to a bidding war.

Chairman Getman suggested that the threshold not be raised at this time, but that it be looked at again when the commission discusses the offensive use issue.

Conflict of Interest Phase 2, Project F

Mr. Woodlock then introduced the "government salary exception" issue. He explained that the current regulation has caused a fair amount of confusion and that this exception has been in the regulation since the beginning of the Political Reform Act. The intent of this provision, he explained, is to avoid disqualification of governmental officials when the financial effect would be on their governmental agency. In *In Re Moore,* the meaning of government salary was extended to cover fringe benefits. He explained that staff has applied this decision to different kinds of fringe benefits, including retirement, pensions, etc.

Commissioner Scott left the meeting at 3:35.

The first decision for the commission on this issue was whether to affirm the logic of *In Re Moore*. He noted that the proposed definition of "salary" did not comport with the dictionary definition of "salary" or the legal definition of "salary" in the Internal Revenue Code as well as other bodies of law. However, he pointed out, it should be defined as it is used in the statute, and a broader definition is necessary to fairly apply the government salary exception.

Mr. Woodlock further explained that if the commission does choose to continue the logic of *In Re Moore,* staff suggested the adoption of a whole new regulation which codifies the holding in *In Re Moore*. Currently, he noted, it is difficult for people to know what the government salary exception really means because those definitions are not available in the regulations. The proposal would define "government salary," "reimbursement," and "per diem."

Ms. Menchaca noted that the way the regulation is drafted, the definition of "salary" provides that within that exception salary from any governmental entity is included, regardless of whether the salary is from the governmental entity that the official is sitting on.

Chairman Getman questioned whether a city council member also employed by a school board should be treated any differently from any other conflict involving an employer if the city council member was going to have to make a decision about a school board. She noted that if she could not make decisions for the FPPC because she is employed by the FPPC she could not do her job. If, however, she had an additional job with another government entity, the the commission was hearing a case involving that government entity, it could be a case where it should be a conflict.

Mr. Woodlock agreed that there was a distinction, and he believed that staff could draft language that would handle that type of situation.

Bob Leidigh noted that, in the past, if there was income from another governmental entity, the next question was whether that other governmental entity was a significant segment of the general public. He gave specific examples noting that in those cases disqualification was not required. He further noted that salary was treated differently from income.

Commissioner Swanson questioned whether pension benefits should be treated differently because they cannot be taken away. Mr. Woodlock responded that *In Re Moore* involved that issue. Commissioner Deaver added that people on pension are often the people who sit on boards.

Mr. Leidigh clarified that receiving salary from a federal governmental agency should not become identified as income, because it would be a major change.

Chairman Getman asked staff to go back and look at what advice staff has given in the past and make sure that this proposal will not effect a regulation that the commission does not want to effect.

Mr. Martello commented that pages 11 and 12 of the staff report, actual expenses incurred should be changed to include fixed expenses.

Mr. Dolley encouraged that the commission adopt the staff recommendation for subparagraph (3), because it clarifies reimbursements.

Chairman Getman agreed that the definitions needed to be codified in the regulation, but the language needed to be looked at by staff and come back to the March meeting.

Mr. Woodlock then presented the technical cleanup of adding "federal" and changing "spouse" to "immediate family"of Section 87103 to make it consistent with the statute. He explained that this regulation should be moved to 18705.5, because it would place the rule in a place which would be much easier to find.

Chairman Getman explained that "discipline" does not necessarily mean that there will be a financial effect. She further explained that it would not necessarily be reasonably forseeable that the person would have a financial effect after some forms of "discipline."

Mr. Woodlock noted that the issue seemed to revolve around the definition of "reasonably forseeable." He added that staff will look at the "discipline" language and look for other ways of wording it, as well as add "public official" to the regulation where it was erroneously left out.

Mr. Woodlock explained that staff recommended Option 4 because it seemed more appropriate to have all of the materiality standards in one place. There was no objection by the commission.

Mr. Bukey suggested that the commission consider forms of discipline that have an immediate

financial effect, such as suspensions without pay, as a form of discipline with an impact.

Mr. Woodlock introduced the problem of the absence of a materiality standard for government entities which turn out to be sources of income. He noted that the government salary exception does remove government as a potential source of income in almost all of the conflicts cases. However, he added, there are a few instances where that exception does not apply. There is no regulation currently that sets a materiality standard for those instances. The commission could take no action and staff would continue to analogize to the regulation for nonprofit entities, or it could direct staff to amend 18705.3(b) to add "and governmental agencies" so that it becomes a dual purpose regulation, or it could ask staff to construct a whole new regulation.

Chairman Getman asked if there was any objection to amending the current regulation. There was none.

Item #25. Prenotice Discussion of Proposed Amendments to Regulation 18427.1.

Technical Assistance Division Chief Carla Wardlow explained that the recipients of $5,000 or more must notify the contributor that once the contributor reaches contributions totaling $10,000, that contributor has a filing obligation in California, as a major donor committee. She noted that it is confusing because it may be an individual or a corporation and they do not understand that they are a "committee." Language for campaign treasurers to use for this notice was adopted in Regulation 18427.1.

Chairman Getman suggested that the first paragraph be started, "If your contribution to this committee and to other California state or local committees totals $10,000 or more in a calendar year, you must file a major donor committee campaign statement."

Ms. Wardlow explained that it was originally drafted to begin, "California law requires me to inform you . . ." because it captured the reader's attention quickly.

Chairman Getman revised her suggestion to read, "If your contribution to this committee and to other California state or local committees totals $10,000 or more in a calendar year, **California requires you to file a major donor committee campaign statement."**

There was no objection to Chairman Getman's recommendation.

The meeting adjourned at 4:20 p.m.

Dated: January 19, 2000

Respectfully submitted,

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Sandra A. Johnson
Executive Secretary

Approved by:

_____

Chairman Getman